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- ☐ 206 FEDERAL BUILDING  
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# United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

August 14, 2009

REPLY TO:

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(563) 322-4331
- ☐ 307 FEDERAL BUILDING  
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Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Genachowski,

On July 29, 2009, you announced the appointment of Mark Lloyd as Associate General Counsel and Chief Diversity Officer for the Federal Communications Commission (FCC). I write today to express my concerns with this appointment and ask for you to clarify and reaffirm statements you made to me in a personal meeting prior to your confirmation related to the Fairness Doctrine and efforts to diversify broadcast media.

On April 22, 2009, before your confirmation by the U.S. Senate for your position as Chairman of the FCC, you came to my office and told me that you did not support an effort to reinstitute the Fairness Doctrine. I took you at your word that, if confirmed, the policies that you promoted at the FCC would not include any policy or regulatory shifts that seek to reintroduce the long abandoned Fairness Doctrine. However, I have serious reservations that you may be moving away from these statements you made to me regarding the Fairness Doctrine given the appointment of Mr. Lloyd to a position within the Office of the General Counsel (OGC) at the FCC. Please allow me to elaborate.

My concerns relate to Mr. Lloyd's participation in scholarly writings on political talk radio, the Fairness Doctrine, and efforts to bring greater diversity to talk radio. Prior to joining the FCC, Mr. Lloyd served as a Senior Fellow at the Center for American Progress (CAP), in addition to positions as a professor at the Georgetown Public Policy Institute. In his capacity as a Senior Fellow at the Center for American Progress, he coauthored a paper titled, "The Structural Imbalance of Political Talk Radio." This paper argued that radio programming was currently "imbalanced" and that there are "serious questions about whether the companies licensed to broadcast over the public airwaves are serving the listening needs of all Americans." Mr. Lloyd's paper suggests three options to remedy the "imbalance" in political talk radio, including (1) restoring caps on commercial radio station ownership, (2) ensure greater accountability in licensing, and (3) require owners who fail to enforce public interest ownership obligations to pay a fee. While these remedies seem innocuous on their face, hidden within the paper are some stark revelations.

First, Mr. Lloyd's paper suggests that the Fairness Doctrine was "never formally repealed." Instead, Mr. Lloyd argues that the FCC merely announced "it would no longer enforce certain

RANKING MEMBER,  
FINANCE

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BUDGET  
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CONTROL CAUCUS

regulations under the umbrella of the Fairness Doctrine.” The paper continues by stating that while the D.C. Circuit Court of Appeals upheld the FCC decision, the Supreme Court has “never overruled the cases that authorized the FCC’s enforcement of the Fairness Doctrine...thus it technically would not be considered repealed.”

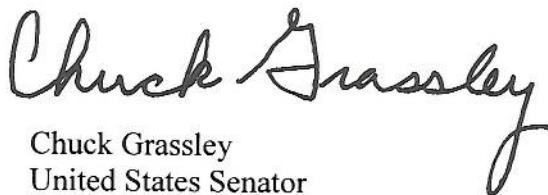
Second, the paper suggests that the FCC revise the licensing process for radio broadcasters. Specifically, it suggests that licenses should not be permitted for longer than three years, that they be subject to challenges in the decision to renew their licenses, and that they submit to strict documentation and regulatory requirements.

Finally, and perhaps most importantly, the paper suggests that commercial radio owners be subjected to new regulatory requirements enforcing public interest obligations and if they fail to meet these standards, subjecting them to fees and taxes in order to compel compliance. The paper suggests that such a fee or fine structure could raise between \$100 million to \$250 million in new revenue, but would not “overly burden commercial radio broadcasters.”

Taken together, these statements represent a view that the FCC needs to expand its regulatory arm further into the commercial radio market. However, it would be unfair for me to say that Mr. Lloyd has specifically advocated for a return to the Fairness Doctrine. Instead, he has argued that the Fairness Doctrine is unnecessary if other regulatory reforms to commercial radio are implemented. Specifically, in discussing the CAP paper “The Structural Imbalance of Political Talk Radio,” Mr. Lloyd authored an internet article published on CAP’s website entitled, “Forget the Fairness Doctrine.” In that piece, Mr. Lloyd stated, “we call for ownership rules that we think will create greater local diversity...we call for more localism by putting teeth into the licensing rules. But we do not call for a return to the Fairness Doctrine.”

Simply put, I strongly disagree with Mr. Lloyd. I do not believe that more regulation, more taxes or fines, or increased government intervention in the commercial radio market will serve the public interest or further the goals of diversifying the marketplace. I am concerned that despite his statements that the Fairness Doctrine is unnecessary, Mr. Lloyd supports a backdoor method of furthering the goals of the Fairness Doctrine by other means. Accordingly, I ask that you clarify and reaffirm your commitment to me to oppose any reincarnation of the Fairness Doctrine. Further, I ask you to affirmatively state that you will not pursue an agenda that includes any new restrictions, fines, fees, or licensing requirements on commercial radio that would effectively create a backdoor Fairness Doctrine. I appreciate your prompt reply regarding this important matter.

Sincerely,

  
Chuck Grassley  
United States Senator